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14 UNITED STATES DISTRICT COURT

15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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22 TOY; TERESA TOY; and VANESSA WEST; For
Themselfs, As Private Attorneys General, and On
23 Behalf Of All Others Similarly Situated,
Plaintiffs,

24
25 vs.

26 CELLCO PARTNERSHIP D/B/A VERIZON
27 WIRELESS; and VERIZON
COMMUNICATIONS INC.,

28 Defendants.

CASE No. 3:21-cv-08592-EMC

**VERIZON'S MEMORANDUM IN
SUPPORT OF REQUEST FOR
LEAVE TO FILE SUPPLEMENTAL
BRIEF**

Judge: Hon. Edward M. Chen

1 Defendants Verizon Wireless and Verizon Communications, Inc. (collectively, “Verizon”)
 2 respectfully submit this memorandum in support of their request for leave to file a supplemental
 3 brief concerning a dispositive legal development subsequent to the May 19, 2022, hearing on
 4 Defendants’ motion to compel arbitration.

5 Specifically, Defendants write to highlight the significance of the Supreme Court’s opinion
 6 in *Viking River Cruises, Inc. v. Moriana*, No. 20-1573 (Slip. Op. June 15, 2022), which resolved
 7 an appeal referenced in the briefing on Defendants’ pending motion to compel arbitration and stay
 8 (ECF Nos. 20, 34). For the reasons stated below and to be outlined more fully in Verizon’s
 9 proposed supplemental brief, the Supreme Court’s analysis in *Viking River* compels dismissal of
 10 Plaintiffs’ public injunctive relief request and enforcement of the arbitration clause as to Plaintiffs’
 11 individual request for injunctive relief.

12 In *Viking River*, the Court stated that “state law cannot condition the enforceability of an
 13 arbitration agreement on the availability of a procedural mechanism that would permit a party to
 14 expand the scope of the arbitration by introducing claims that the parties did not jointly agree to
 15 arbitrate.” Slip Op. at 18. The Court held that *Iskanian v. CLS Transportation Los Angeles, LLC*,
 16 59 Cal. 4th 348, which invalidates agreements to arbitrate only individual PAGA claims, conflicts
 17 with the Federal Arbitration Act (FAA). This is so because “[i]f the parties agree to arbitrate
 18 ‘individual’ PAGA claims based on personally sustained violations, *Iskanian* allows the aggrieved
 19 employee to abrogate that agreement after the fact and demand either judicial proceedings or an
 20 arbitral proceeding.” Slip Op. at 19. The Supreme Court concluded that “[e]ither way, the parties
 21 are coerced into giving up a right they enjoy under the FAA.” *Id.*

22 The holding of *Viking River* bears directly on Plaintiffs’ argument regarding *McGill v.*
 23 *Citibank*, N.A., 2 Cal. 5th 945 (2017). In *McGill*, the California Supreme Court held that an
 24 arbitration agreement waiving a right to request public injunctive relief in any forum is invalid and
 25 unenforceable under California law. *Id.* at 961. Plaintiffs contend that *McGill* renders
 26 Paragraph (3) of the Customer Agreement unenforceable. *See* Pls.’ Opp’n to Verizon’s Mot. to
 27 Compel Arbitration and Stay Proceedings (“Mot. to Compel Arbitration”) (ECF No. 29) at 14-15.
 28 *Viking River* conclusively forecloses this argument. To the extent that *McGill* purports to

1 invalidate the parties' agreement under Paragraph (3) "to arbitrate only individual [injunctive
 2 relief] claims" based on "personally sustained violations," it is inconsistent with the FAA because
 3 it would permit Plaintiffs "to abrogate [the parties'] agreement after the fact and demand either
 4 judicial proceedings or an arbitral proceeding that exceeds the scope jointly intended by the
 5 parties." *Viking River*, Slip Op. at 18, 19.

6 Under Verizon's Customer Agreement, the parties agreed to arbitrate only individual
 7 claims for injunctive relief on behalf of an individual party. *See ECF No. 30-7 (Exhibit G)* at ECF
 8 p.7. *Viking River* underscores that Paragraph (3) is a valid and binding provision that the Court
 9 should enforce. *Viking River* makes clear that, just as in the PAGA context, the fact that
 10 enforcement of an arbitration clause may as a practical matter prevent adjudication of a public
 11 injunctive relief claim does not provide a basis to refuse to enforce an arbitration clause pursuant
 12 to the FAA. *See Viking River*, Slip Op. at 21. Accordingly, Verizon respectfully requests that the
 13 Court grant its motion for leave to file a supplemental brief.

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16 DATED: June 22, 2022

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By _____ /s/ *Crystal Nix-Hines*

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